TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 302.

CITIZENS BANK OF PRYOR CREEK, PLAINTIFF IN ERROR,

vs.

C. M. KEYS AND HUGH MILLS, PARTNERS UNDER THE NAME OF C. M. KEYS & CO., AND STOCK YARDS BANK, A CORPORATION, AND WAT MAYES.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

FILED MAY 9, 1913.

(22,693)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 22, 1912.

1 In the Supreme Court of the State of Oklahoma.

No. 1949.

CITIZENS BANK OF PRYOR CREEK, Plaintiff in Error,
vs.
C. M. KEYS and HUGH MILLS, Partners under the Name of C. M. Keys & Co., and Stock Yards Bank, a Corporation, and Wat Mayes, Defendants in Error.

Return to Writ of Error.

In obedience to the within Writ of Error I herewith transmit to the Supreme Court of the United States, a full, true and complete transcript of the record and all proceedings concerning the same, in the above entitled cause, except the case made, a copy of which is incorporated in the appeal in case No. 1947, First National Bank of Claremore, Plaintiff in error, vs. C. M. Keys and Hugh Mills, a partnership under the firm name of C. M. Keys & Company, and Stock Yards Bank, a corporation, and Wat Mayes, Defendants in error, and herein referred to, and is omitted from the transcript in this case at the request of attorney for plaintiff in error.

In witness whereof, I hereto set my hand and affix the seal of said court, at Oklahoma City, this 10th day of March, 1911.

[Seal Supreme Court, State of Oklahoma.]

W. H. L. CAMPBELL,
Clerk Supreme Court,
By JESSIE PARDOE, *Deputy.*

2 *Citation.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to C. M. Keys, Hugh Mills, a partnership under the name of C. M. Keys & Company; Stock Yards Bank, a Corporation, and Wat Mayes, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States, at Washington, D. C. within thirty (30) days from the date hereof, pursuant to a Writ of error filed in the office of the Clerk of the Supreme Court of the State of Oklahoma, wherein Citizens Bank of Pryor Creek is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Chief Justice of the Supreme Court of the State of Oklahoma, this the 13th day of February, 1911.

JOHN B. TURNER,
Chief Justice of the Supreme Court of the State of Oklahoma.

[Seal Supreme Court, State of Oklahoma.]

Attest:

W. H. L. CAMPBELL,
Clerk of the Supreme Court of the State of Oklahoma,

By JESSIE PARDOE, *Deputy.*

Service of this Citation is hereby accepted Feb'y 21, 1911.

ROBERT F. BLAIR,
Attorney for C. M. Keys & Co. and Stock Yards Bank.

I, the undersigned, Wat Mayes, do hereby acknowledge service of the within and foregoing citation upon me, in Mayes County, Oklahoma, this the 20th day of February, 1911.

WAT MAYES.

Witnesses:
H. A. KAHN.
HARVE LANGLEY.

3 [Endorsed:] No. 1949. Citizens Bank of Pryor Creek, Plaintiff in Error, vs. C. M. Keys, et al., Defendants in Error. Citation. Filed Feb. 27, 1911. W. H. L. Campbell, Clerk.

4 In the Supreme Court of the State of Oklahoma.

No. 1949.

CITIZENS BANK OF PRYOR CREEK, Plaintiff in Error,
vs.
C. M. KEYS and HUGH MILLS, Partners of the Name of C. M. Keys & Company, and Stock Yards Bank, a Corporation, and Wat Mayes, Defendants in Error.

Application for Allowance of Writ of Error and the Fixing of Amount of Supersedeas Bond.

The Citizens Bank of Pryor Creek represents that on the tenth day of January, 1911, the Supreme Court of the State of Oklahoma, which is the highest Court in the State of Oklahoma, in which a decision in this suit can be had, entered a final judgment and filed an opinion, dismissing the proceedings in error in this cause from the judgment of the District Court of Craig County, Oklahoma, adjudging that the plaintiff in error was not entitled to any of the funds derived from the sale of the cattle attached in the cause, and

the ground for dismissal was that "the decision of this Court when this case was before it on a former appeal determines every question of law which is now presented by counsel for plaintiff in
5 error, and therefore there is nothing for this court to determine, and the petition in error ought to be dismissed."

That this suit was commenced in the United States Court in and for the Indian Territory, Northern District thereof, on the 20th day of July, 1905, and the proceedings in said court resulted in a judgment for the plaintiff in error against Wat Mayes, and in said suit there was an intervention by this plaintiff in error, seeking to recover the proceeds of certain cattle attached in said suit, and in said suit C. M. Keys, Hugh Mills, partners under the name of C. M. Keys & Company, and Stock Yards Bank, intervened and sought to apply to their debt the entire proceeds of the cattle attached, and the suit and intervention proceeds to judgment in the United States Court, Indian Territory, Northern District, to the effect that this plaintiff in error was entitled to have its claim against Wat Mayes to the amount of Two Thousand Eighty-three Dollars and Thirty-three cents ($2,083.33), paid out of the proceeds of the sale of the cattle adjudged, and denying the application of C. M. Keys & Company and Stock Yards Bank to have the said fund set aside to satisfy their claim to the amount of $15,808.69.

That an appeal was taken from the said judgment to the United States Court of Appeals in the Indian Territory, by C. M. Keys & Company and Stock Yards Bank, and said appeal was pending at the time of the admission of the State of Oklahoma into the Union, and the Supreme Court of said State assumed jurisdiction of the same, and said Supreme Court on the tenth day of September, 1908, filed an opinion reversing and modifying the said judgment, and on the ninth day of December, 1909, after an opinion on re-hearing, affirmed its former opinion, and on the ninth day of December, 1909, caused to be issued a mandate to the District Court of Craig County, Oklahoma, commanding the said District Court of Craig County, "to take such further proceedings herein as shall ac-
6 cord with said opinion of the Supreme Court and right and justice."

That in the proceedings had in the United States Court, in the Indian Territory, and in the Supreme Court of the State of Oklahoma, and in the District Court of Craig County, Oklahoma, this plaintiff in error specially claimed a title, and a right under the Constitution, and the Statutes of the United States, and it claimed a right, a title, a privilege and an immunity under an authority exercised under the United States, and the decision of the Supreme Court of the State of Oklahoma, and the District Court of Craig County, Oklahoma, is against such title, right, privilege and immunity, so specially set up and claimed by this plaintiff in error, under said Constitution, Statutes and authority, and in said suit the validity of the Statute of the United States, and the validity of the authority exercised under the United States, was drawn in question, and the decision of the Supreme Court of the State of Oklahoma, and of the District Court of Craig County, Oklahoma, was against their validity,

and the plaintiff in error represents and avers that in the said judgment of the Supreme Court of the State of Oklahoma, as well as in the judgment of the District Court of the County of Craig, State of Oklahoma, there were manifest errors to the prejudice of this plaintiff in error, and the plaintiff in error, to the end that further and complete justice be done, prays for an order allowing it to prosecute a writ of error to the Honorable Supreme Court of the United States, under and in accordance with the laws of the United States in that behalf made and provided; and also that an order be made fixing the amount of security which it shall make and furnish upon said writ of error, by way of supersedeas and cost bond, and further states that there is herewith presented its assignment of errors, alleged to have been committed by said Court, and intended to be urged in the prosecution by it of said suit in error, and prays that the
7 judgment of the Supreme Court of the State of Oklahoma, and of the District Court of Craig County, Oklahoma, be reversed

CITIZENS BANK OF PRYOR CREEK,
By J. H. LANGLEY, *Attorney.*

[Endorsed:] Filed Jan. 23, 1911. W. H. L. Campbell, Clerk.

Let a writ of error issue in the above cause, and the Cost and Supersedeas Bond is fixed at $2000.00, and it is further ordered that the Mandate of the lower Court be with-held for twenty (20) days to enable the plaintiff in error to prepare and tender its Bond for approval.

This the 23rd day of January, 1911.

[Seal Supreme Court, State of Oklahoma.]

JOHN B. TURNER,
Chief Justice of the Supreme Court of the State of Oklahoma.

Attest:

W. H. L. CAMPBELL, *Clerk,*
By JESSIE PARDOE, *Deputy.*

Filed Jan. 23, 1911. W. H. L. Campbell, Clerk.

8 In the Supreme Court of the State of Oklahoma.

No. 1949.

CITIZENS BANK OF PRYOR CREEK, Plaintiff in Error,
vs.
C. M. KEYS and HUGH MILLS, Partners of the Name of C. M. Keys & Company, and Stock Yards Bank, a Corporation, and Wat Mayes, Defendants in Error.

Assignment of Errors.

The plaintiff in error, Citizens Bank of Pryor Creek, makes the following assignment of errors upon which it will rely upon its prosecu-

tion of the writ of error to the Supreme Court of the United States, in the above entitled cause, from the judgment rendered by the Supreme Court of the State of Oklahoma, on the tenth day of January, 1911, affirming the judgment of the District Court of Craig County, Oklahoma, and the following assignment of errors alleged to have been committed by the District Court of Craig County, Oklahoma, and the following assignment of errors alleged to have been committed by the Supreme Court of the State of Oklahoma, upon the first appeal in this cause, and it says:

I.

That the Supreme Court of the State of Oklahoma erred
9 in dismissing the petition in error prosecuted by it from the judgment of the District Court of Craig County, Oklahoma.

II.

The Supreme Court of the State of Oklahoma erred in holding that all the questions presented by the second appeal were disposed of upon the first appeal.

III.

The District Court of Craig County, Oklahoma, erred in rendering judgment against the plaintiff in error, and the Supreme Court of the State of Oklahoma erred in dismissing the proceedings in error instituted by the plaintiff in error to the judgment of the District Court of Craig County, Oklahoma.

IV.

The District Court of Craig County, Oklahoma, erred in refusing to allow the plaintiff in error to amend its pleadings, and the Supreme Court of the State of Oklahoma, erred in dismissing the proceedings in error to review the judgment.

V.

The District Court of Craig County, Oklahoma, erred in refusing to allow the plaintiff in error to file an amended answer to the interplea of the defendants in error, and the Supreme Court of the State of Oklahoma, erred in refusing to reverse the order of the District Court of Craig County, Oklahoma.

VI.

The District Court of Craig County, Oklahoma, erred in holding that the claims of the defendants in error to the cattle fund were superior to the claims of the plaintiff in error, and the Supreme Court of the State of Oklahoma, erred in refusing to disturb the action of the District Court of Craig County, Oklahoma.

VII.

The District Court of Craig County, Oklahoma, erred in undertaking to disturb the action of the United States Court, in the Indian Territory, Northern District, awarding to this plaintiff in error payment out of the cattle fund of the amount due it from the defendant, Wat Mayes, and the Supreme Court of the State of Oklahoma erred in refusing to disturb the action of the District Court of Craig County, Oklahoma.

VIII.

The District Court of Craig County, Oklahoma, erred in rendering the judgment it did upon the findings of fact that were made by the United States Court in the Indian Territory, Northern District, and the Supreme Court of the State of Oklahoma erred in refusing to disturb the action of the District Court.

IX.

The District Court of the County of Craig, State of Oklahoma, erred in rendering judgment without making findings of fact, and the Supreme Court of the State of Oklahoma erred in refusing to disturb the action of the District Court.

X.

The District Court of Craig County, Oklahoma, erred in not segregating the cattle fund from the lot fund, and in not making separate distribution of the respective funds, and the Supreme Court of the State of Oklahoma erred in refusing to disturb the action of the District Court.

XI.

The District Court of Craig County, Oklahoma, erred in not finding the amount that it should repay and to whom, and the Supreme Court of the State of Oklahoma erred in refusing to disturb the action of the District Court.

XII.

The District Court of Craig County, Oklahoma, erred in not finding specifically the amount of the costs that should be taxed to the various parties in the case, and the Supreme Court of the State of Oklahoma erred in refusing to disturb the action of the District Court.

XIII.

The District Court of Craig County, Oklahoma, erred in exhausting the cattle fund by ordering that it should be paid to C. M. Keys & Company and Stock Yards Bank, to the detriment of this plaintiff in error, and the Supreme Court of the State of Oklahoma erred in refusing to disturb the action of the District Court.

XIV.

The District Court of Craig County, Oklahoma, erred in rendering judgment without a trial, and the Supreme Court of the State of Oklahoma erred in refusing to disturb the action of the District Court.

XV.

The District Court of Craig County, Oklahoma, erred in holding that the mortgage relied upon by the defendants in error was duly of record under the laws of the United States, and under the laws of the United States was superior to the mortgage of the plaintiff in error, and the Supreme Court of the State of Oklahoma erred in refusing to disturb the action of the District Court.

XVI.

The District Court of Craig County, Oklahoma, erred in rendering judgment against the plaintiff in error.

XVII.

The Supreme Court of the State of Oklahoma arred in taking jurisdiction of the original appeal.

XVIII.

The Supreme Court of the State of Oklahoma erred in modifying the judgment of the United States Court of the Indian Territory, Northern District on the first appeal.

XIX.

The Supreme Court of the State of Oklahoma erred on the first appeal in holding that the evidence did not warrant the finding that the mortgage relied upon by C. M. Keys & Company and Stock Yards Bank had become fraudulent and void as against other lien claimants and attaching creditors.

XX.

The Supreme Court of the State of Oklahoma erred on the first appeal in holding that it was not necessary, after the division of the Northern District of the Indian Territory into the Northern District and the Western District, to have the C. M. Keys & Company and Stock Yards Bank mortgage placed of record at Vinita.

XXI.

The Supreme Court of the State of Oklahoma erred on the first appeal in holding that it was not necessary for C. M. Keys & Company and Stock Yards Bank to have their mortgage indexed at Pryor Creek, after the making of the recording districts in the Indian Territory.

XXII.

The Supreme Court of the State of Oklahoma erred in the first appeal in holding that it was not necessary for the mortgagee to take possession of the property, and was also not necessary for the mortgagee to have the mortgages put of record at Vinita and also at Pryor Creek.

XXIII.

The Supreme Court of the State of Oklahoma, erred on the first appeal in holding that it was admitted that the plaintiff in error had actual knowledge of the existence of the chattel mortgage to C. M. Keys & Company and Stock Yards Bank.

XXIV.

The Supreme Court of the State of Oklahoma erred on the first appeal in holding that the rule of law with reference to real property records was the same as in case of personal property.

XXV.

The Supreme Court of the State of Oklahoma on the first
13 appeal — in holding that it was not necessary for the mortgagee, after the division of the districts, to pay the fees of indexing or recording the mortgages in the new districts, where the property was located and the mortgagors resided.

XXVI.

The Supreme Court of the State of Oklahoma erred on the first appeal in holding that it was the duty of the Clerk of the United States Court of Indian Territory to transfer to the indexes at other places the mortgages that had there-to-fore been recorded in his office, without request upon the mortgagees and without payment of the fees.

XXVII.

The Supreme Court of the State of Oklahoma erred on the first appeal in holding that a mortgage once recorded was notice to all persons of the existence of such mortgage.

XXVIII.

The Supreme Court of the State of Oklahoma erred on the first appeal in holding that the filing of the mortgage henceforth gave notice to everybody of its existence, notwithstanding the divisions of the Districts and the change of the places of recording.

XXIX.

The Supreme Court of the State of Oklahoma on the first appeal erred in holding that the Clerk of the United States Court had not urged as an excuse for his failure to record in other districts or to transfer to the indexes in other districts, the mortgage of C. M.

Keys & Company and Stock Yards Bank, his inability so to do, but had urged the want of an appropriation for it.

XXX.

The Supreme Court of the State of Oklahoma erred on the first appeal in holding that there was no question of actual fraud in the case, and that the Supreme Court of the State of Oklahoma erred in holding that it was not claimed that there was any
14 fraud in the case.

XXXI.

The Supreme Court of the State of Oklahoma erred on the first appeal in holding that C. M. Keys & Company and Stock Yards Bank had done all that was necessary to keep their mortgages alive, as required by the laws of the United States relating to recording of mortgages.

XXXII.

The Supreme Court of the State of Oklahoma erred on the first appeal in holding that the claim of C. M. Keys & Company and Stock Yards Bank was superior to the claim of the plaintiffs in error.

XXXIII.

The Supreme Court of the State of Oklahoma erred on the first appeal in modifying the judgment.

XXXIV.

The Supreme Court of the State of Oklahoma erred on rehearing of the first appeal in holding that the acknowledgment upon the C. M. Keys & Company and Stock Yards Bank mortgage was in accordance with the laws of the United States.

XXXV.

The Supreme Court of the State of Oklahoma erred on the first appeal on re-hearing in holding that there was no evidence to support the finding of the United States Court in Indian Territory, Northern District, to the effect that there was fraud in the method of handling the mortgaged property, such as to invalidate the C. M. Keys & Company and Stock Yards Bank mortgage.

XXXVI.

The Supreme Court of the State of Oklahoma erred in holding that the evidence did not show that any of the creditors of Wat Mayes were prejudiced in any way by the dealings of Wat
15 Mayes with C. M. Keys & Company or their assignees, Stock Yards Bank.

XXXVII.

The Supreme Court of the State of Oklahoma erred in holding that the charge of fraud by the defendants in error was without foundation.

XXXVIII.

The Supreme Court of the State of Oklahoma erred in refusing to render a judgment, if they were going to reverse the case, providing for the distribution of the funds derived from the sale of the lots, and the funds derived from the sale of the cattle, and erred in refusing to give instructions to the Court below what to do upon this matter.

The plaintiff in error says that all things complained of in the assignment of error took place over and above its objections and exception, and to its damage, and against its rights, as given by the laws of the United States.

Wherefore, the plaintiff in error prays that the judgment of the Supreme Court of the State of Oklahoma dismissing its proceedings in er-or to the District Court of Craig County, Oklahoma, be reversed; that the judgment of the District Court of Craig County, Oklahoma, be reversed; that the judgment of the Supreme Court of the State of Oklahoma upon the first appeal by C. M. Keys & Company and Stock Yards Bank from the judgment of the United States Court, of Indian Territory, Northern District, be reversed; and, that the judgment of the United States Court in the Indian Territory, Northern District, be, in all things affirmed, and that proper instructions be given to the lower Court for carrying out the judgment of this Court.

CITIZENS BANK OF PRYOR CREEK,
Plaintiff in Error.

By J. H. LANGLEY, *Attorney.*

16 [Endorsed:] No. 1949. Citizens Bank of Pryor Creek, Plaintiff in Error, vs. C. M. Keys and Hugh Mills, partners of the name of C. M. Keys & Co. and Stock Yards Bank, a Corp. and Wat Mayes, Defendants in Error. Application for allowance of Writ of Eror and the fixing of amount of supersedeas bond & assignment of errors. Filed Jan. 23, 1911. W. H. L. Campbell, Clerk. J. Howard Langley, Attorney for Plaintiff in Error.

17 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Justice of the Supreme Court of the State of Oklahoma, Greeting:

Because, in the record and proceedings, and also in the rendition of the judgment of a plea which is in the Supreme Court of the State of Oklahoma before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in said suit between Citizens Bank of Pryor Creek, plaintiff in error, and C. M. Keys, Hugh Mills, a partnership under the name of C. M. Keys & Company, and Stock Yards Bank, a Cor-

poration, and Wat Mayes, defendants in error, wherein rights, privileges and immunities are claimed under the Constitution and Statutes of the United States, and under authority exercised under the United States, and the decision was against the rights, privileges and immunities specially set up or claimed under such Constitution, Statutes and authority a manifest error has happened, to the great damage of the said Citizens Bank of Pryor Creek, as by its complaint appears, we being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you *that* if judgment be therein given that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington within thirty days from the date hereof in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

18 Witness the Honorable Edward D. White Chief Justice of the Supreme Court of the United States, the 15th day of February, in the year of our Lord One Thousand Nine Hundred and Eleven.

[The Seal of the Circuit Court of the United States, Western District of Oklahoma.]

HARRY L. FINLEY,
Clerk of the Circuit Court of the United States for the Western District of Oklahoma.

Allowed by—

[Seal Supreme Court, State of Oklahoma.]

JOHN B. TURNER,
Chief Justice of the Supreme Court of the State of Oklahoma.

19 [Endorsed:] No. 1949. Citizens Bank of Pryor Creek, Plaintiff in Error, vs. C. M. Keys, et al., Defendants in Error. Writ of Error. Filed Feb. 16, 1911. W. H. L. Campbell, Clerk.

20 In the Supreme Court of the State of Oklahoma.

No. 1949.

CITIZENS BANK OF PRYOR CREEK, Plaintiff in Error,
vs.
C. M. KEYS — HUGH MILLS, a Partnership under the Name of C. M. Keys & Company, and Stock Yards Bank, a Corporation, and Wat Mayes, Defendants in Error.

Know all men by these presents That we, Citizens Bank of Pryor Creek, as principal, and J. D. Hinton of Pryor, Oklahoma and E. M.

Bowers of Pryor, Oklahoma, as sureties, are held and firmly bound unto above named C. M. Keys — Hugh Mills, a partnership of the name of C. M. Keys & Company, and Stock Yards Bank, a Corporation, and Wat Mayes, in the sum of Two Thousand Dollars ($2000.00) to be paid to them and for the payment of which, well and truly to be made, we bind ourselves and each of us and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 8th day of February, in the year of our Lord One Thousand Nine Hundred and Eleven.

Whereas, the above named Citizens Bank of Pryor Creek, plaintiff in error, seeks to prosecute its writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Oklahoma.

Now, therefore, the condition of this obligation is such that if the above named plaintiff in error shall prosecute its writ of error to effect and answer all costs and damages that may be adjudged if it shall fail to make good its plea, then this obligation to be
21 void; otherwise, to remain in full force and effect.

CITIZENS BANK OF PRYOR CREEK,
By J. C. HOGAN, *President.*
J. D. HINTON.
E. M. BOWERS.

Approved this the 31" day of February, 1911.

JOHN B. TURNER,
Chief Justice of the Supreme Court of the State of Oklahoma.

STATE OF OKLAHOMA,
County of Mayes, ss:

J. D. Hinton one of the sureties in the foregoing bond, being duly sworn, says, that he is a resident and freeholder of the State of Oklahoma, and resides in Mayes County, and that he is worth, above all just debts and liabilities in property not by law exempt from execution in the state of Oklahoma, the sum of $5000.00.

J. D. HINTON.

Subscribed and sworn to before me this the 8th day of February, 1911.

[SEAL.]

R. W. THOMAS,
Notary Public.

My Commission expires Oct. 3, 1912.

STATE OF OKLAHOMA,
County of Mayes, ss:

E. M. Bowers one of the sureties in the foregoing bond, being duly sworn, says, that he is a resident and freeholder of the State of Oklahoma, and resides in Mayes County, and that he is worth, above all

just debts and liabilities in property not by law exempt from execution in the State of Oklahoma, the sum of $2000.00.

E. M. BOWERS.

Subscribed and sworn to before me this the 8th day of February, 1911.

[SEAL.] R. W. THOMAS,
Notary Public.

Commission expires Oct. 3, 1912. *1911.*

Filed Feb. 14, 1911. W. H. L. Campbell, Clerk.

[Endorsed:] #1949. Copy of Appeal Bond.

22 In the Supreme Court of the State of Oklahoma.

No. 1949.

CITIZENS BANK OF PRYOR CREEK, Plaintiff in Error,
vs.
C. M. KEYS and HUGH MILLS, Partners under the Name of C. M. Keys & Co., and Stock Yards Bank, a Corporation, and Wat Mayes, Defendants in Error.

Petition in Error of Citizens Bank of Pryor Creek.

The plaintiff in error represents and shows to the Court that in a certain suit wherein First National Bank of Claremore was plaintiff and Wat Mayes was defendant, brought in the United States Court in the Indian Territory, Northern District, at Vinita, on the 20th day of July, 1906, certain cattle were attached upon which the plaintiff in error had a mortgage; that in said suit this plaintiff in error intervened, and in said suit C. M. Keys and Hugh Mills, partners under the name of C. M. Keys & Co., and Stock Yards Bank intervened, claiming the attached property under a mortgage; that various other parties intervened and the cause was placed upon the equity docket and finally resulted in a judgment ordering the cattle sold and the proceeds distributed, and that there was sufficient of the proceeds to pay the plaintiff in error in full its debt, amounting to $— and it did receive the same under said judgment. That an appeal was taken from the judgment in the cause to the United States Court of Appeals in the Indian Territory, and on the admission of the State of Oklahoma into the Union, the Supreme Court
23 of the State took Jurisdiction of said appeal, and that thereafter said Court rendered an opinion reversing the action of the United States Court in the Indian Territory, Northern District, and remanding the cause to the District Court of Craig County, Oklahoma. That after the mandate came down this plaintiff in error, — accordance with said opinion, made application to the District Court of Craig County, Oklahoma, for leave to file an amended answer to the inperlea of C. M. Keys & Co. and Stock Yards Bank, and

did tender an answer therewith on the 2nd day of April, 1910, and on the same day, to-wit: on the 2nd day of April, 1910, the Court refused to allow it to file an amended answer or to allow it to file any pleadings in the cause, and that thereafter on said day this plaintiff in error objected to the court's making any orders disturbing the judgment of the United States Court in the Indian Territory, Northern District, and said Court, over its objection and exception, proceeded so to do and proceeded to order that the cattle fund be paid to C. M. Keys & Co. and to Stock Yards Bank, and by so doing did exhaust the entire cattle fund, on which this plaintiff in error held a lien; all of which things happened to the detriment of this plaintiff in error.

And this plaintiff in error prays that the action of the District Court of Craig County, Oklahoma, be in all things reversed, and that the action of the United States Court in the Indian Territory, Northern District, be in all things affirmed; and it makes the following assignment of errors:

I.

The District Court of Craig County, Oklahoma, erred in refusing to allow it to file an amended answer to the interplea of the defendants in error.

24

II.

The District Court of Craig County, Oklahoma, erred in holding that the claims of the defendants in error to the cattle fund were superior to the claim of the plaintiff in error.

III.

The District Court of Craig County, Oklahoma, erred in undertaking to disturb the action of the United States Court in the Indian Territory, Northern District, awarding to this plaintiff in error payment out of the cattle fund of the amount due it from the defendant Wat Mayes.

IV.

The District Court of Craig County, Oklahoma, erred in rendering judgment upon the findings of fact that were made by the United States Court in the Indian Territory, Northern District, and which were allowed to stand.

V.

The District Court of Craig County, Oklahoma, erred in rendering judgment without making find-s of fact.

VI.

The District Court of Craig County, Oklahoma, erred in not segregating the cattle fund from the lot fund and making separate distribution of the respective funds.

VII.

The District Court of Craig County, Oklahoma, erred in not finding the amount that should be repaid, and to whom, by this plaintiff in error.

VIII.

The District Court of Craig County, Oklahoma, erred in not finding specifically the amount of costs that were to be taxed to the various parties in the case.

IX.

The District Court of Craig County, Oklahoma, erred in exhausting the cattle fund by ordering that it should be paid to C M. Keys & Co. and Stock Yards Bank, to the detriment of this plaintiff in error.

X.

The District Court of Craig County, Oklahoma, erred in refusing to allow this plaintiff in error a trial.

XI.

The District Court of Craig County, Oklahoma, erred in rendering judgment without a trial.

XII.

The District Court of Craig County, Oklahoma, erred in holding that the mortgage relied upon by the defendants in error was duly of record under the laws of the United States and was superior to the mortgage claimed under by the plaintiff in error.

There is hereto attached the original case-made wherein appears the things and actions complained of.

CITIZENS BANK OF PRYOR CREEK,
Plaintiff in Error,
By J. HOWARD LANGLEY, *Attorney.*

(Filed Aug. 26, 1910. W. H. L. Campbell, Clerk.)

26 In the Supreme Court of Oklahoma.

No. 1949.

CITIZENS BANK OF PRYOR CREEK, Plaintiff in Error,
vs.
C. M. KEYS et al., Defendants in Error,

and

No. 1950.

J. C. HOGAN, Plaintiff,
vs.
C. M. KEYS et al., Defendants.

Motion by C. M. Keys & Company and Stock Yards Bank to Dismiss Petition in Error.

And now comes defendants in error, C. M. Keys & Company and Stock Yards Bank, and appearing herein specially for the purpose of this motion only, *and* respectfully show to the court:

(1) That plaintiffs in error have failed to have summons in error served upon these defendants in error as required by law.

(2) That plaintiffs in error have failed to give bond as conditioned by law.

(3) That plaintiffs in error have failed to comply with Rule number 7 of this court, and prepare and serve upon counsel for opposite parties their brief.

(4) That the petition in error is filed herein for the purpose of delay only, and is therefore fraud upon the jurisdiction of this court.

(5) That the decree entered in this cause by the District Court of Craig County conforms in every particular to the mandate of this court.

(6) That the decision of this court, when this case was
27 before it on appeal, judicially determines every question which is now presented by the petition in error filed herein; and the District Court of Craig County, Oklahoma, entered a decree in this case in accordance with said decision of this court, and therefore all the questions which are now raised upon this appeal have been judicialy determined by said decision in the case of C. M. Keys & Company, et al., vs. First National Bank of Claremore, et al., 104 Pac., 346-353.

Wherefore, these defendants in error move the court to dismiss the petition in error filed herein.

And in duty bound these defendants in error will ever pray.

_____,
Attorney for Defendants in Error.

Endorsed: No. 1949. (Filed Nov. 10, 1910. W. H. L. Campbell, Clerk.)

28 And thereafter, to-wit: on the 10th day of November 1910, in the Supreme Court of Oklahoma, the following proceedings were had in said cause:

Supreme Court, September Term, 1910, November 10th, 1910, Twenty-third Judicial Day.

#1949.

CITIZENS BANK OF PRYOR, Plaintiff in Error,
vs.
C. M. KEYS et al., Defendants in Error.

And now on this day it is ordered by the court that the motion of defendants in error herein for leave to argue motion to dismiss orally, be, and the same is hereby denied.

29 And thereafter, to-wit: on the 10th day of January 1911, in the Supreme Court of Oklahoma, the following proceedings were had in said cause:

Supreme Court, January Term, 1911, January 10th, 1911, First Judicial Day.

#1949.

CITIZENS BANK OF PRYOR, Plaintiff in Error,
vs.
C. M. KEYS et al., Defendants in Error.

And now this cause comes on for final decision and determination by the court upon the record and motion to dismiss filed herein.

And the court having duly considered the same and being fully advised in the premises, finds: That the petition in error should be dismissed.

It is therefore ordered and adjudged by the court that the petition in error herein, be, and the same is hereby dismissed.

Opinion Per Curiam.

30 (Filed 10th Day of January, 1911.

In the Supreme Court of the State of Oklahoma.

No. 1947.

FIRST NATIONAL BANK OF CLAREMORE, Plaintiff in Error,
vs.
C. M. KEYS & COMPANY et al., Defendants in Error.

No. 1948.

FIRST NATIONAL BANK OF VINITA, Plaintiff in Error,
vs.
C. M. KEYS & COMPANY et al., Defendants in Error.

No. 1949.

CITIZENS BANK OF PRYOR, Plaintiff in Error,
vs.
C. M. KEYS & COMPANY et al., Defendants in Error.

No. 1950.

J. C. HOGAN, Plaintiff in Error,
vs.
C. M. KEYS & COMPANY et al., Defendants in Error.

(Filed January 10, 1911.)

If, upon a cause being remanded with directions to enter judgment in accordance with the opinion of the supreme court, the court below enters judgment in substantial conformity with the directions of the appellate court, its action will not be disturbed on a second proceeding in error.
(Syllabus by the Court.)

Error from the District Court of Craig County.

Before T. L. Brown, Trial Judge.

Dismissed.

W. H. Kornegay and J. Howard Langley, attorneys for plaintiffs in error.
W. P. Thompson, attorney for intervener, Vinita National Bank.
Robert F. Blair, attorney for the defendants in error, C. M. Keys & Co.

31 *Per Curiam:*

The above entitled cases were before this court in a former proceeding in error and the opinion wherein the facts are fully stated is

reported in 22 Okla. 174. After the mandate went down the First National Bank of Claremore and the First National Bank of Vinita sought to amend their pleadings and retry the issues involved as though the cases had been reversed and remanded for a new trial. The Court refused to allow any amendments, and entered judgment in accordance with what it understood the mandate of the supreme court directed. To reverse this action of the court below this proceeding in error was commenced.

The question now before us arises upon a motion to dismiss the petition in error upon the ground, among others, that, "The decision of this court when this case was before it on a former appeal, determines every question of law which is now presented by counsel for plaintiff in error, and therefore there is nothing for this court to determine and the petition in error ought to be dismissed." This motion must be sustained. An examination of the record discloses that after the case was remanded, the court below entered judgment in substantial conformity with the mandate of the supreme court. It has been held by this court that if upon a cause being remanded for a new trial, the court below had proceeded in substantial conformity to the directions of the appellate court, its actions will not be questioned on a second appeal. O. C. Elec. Gas & Power Co., et al., v. Baumhoff, 21 Okla. 503; C. R. I. & P. Ry. Co. v. Broe, 23 Okla. 396; State Bank of Waterloo, Ill. v. City Nat. Bank of Kansas City, Mo., 110 Pac. 910. The petition in error is dismissed.

32 And thereafter, to-wit: on the 24th day of January, 1911, in the Supreme Court of Oklahoma, the following proceedings were had, to-wit:

Supreme Court, January Term, 1911, January 24th, 1911, Fourth Judicial Day.

#1949.

CITIZENS BANK OF PRYOR, Plaintiff in Error,
vs.
C. M. KEYS et al., Defendants in Error.

And now on this day it is ordered by the court that the mandate of this court in the above entitled cause, be, and the same is hereby stayed.

33 In the Supreme Court of the State of Oklahoma.

No. 1949.

CITIZENS BANK OF PRYOR CREEK, Plaintiff in Error,

vs.

C. M. KEYS and HUGH MILLS, Partners under the Name of C. M. Keys & Co., and Stock Yards Bank, a Corporation, and Wat Mayes, Defendants in Error.

Certificate of Clerk.

I, W. H. L. Campbell, Clerk of the Supreme Court of the State of Oklahoma, do hereby certify that the within and foregoing 32 pages, numbered from 1 to 32, both inclusive, are a full, true and complete transcript of the record and all proceedings in the above entitled cause, except the case made, a copy of which is incorporated in the appeal in case No. 1947, First National Bank of Claremore, Plaintiff in error, vs. C. M. Keys and Hugh Mills, a partnership under the firm name of C. M. Keys & Company, and Stock Yards Bank, a corporation, and Wat Mayes, Defendants in error, and is omitted from the transcript in this case at the request of attorney for plaintiff in error.

In witness whereof, I hereto set my hand and affix the seal of said court, at Oklahoma City, this 10th day of March, 1911.

[Seal Supreme Court, State of Oklahoma.]

W. H. L. CAMPBELL,
Clerk Supreme Court,
By JESSIE PARDOE, *Deputy.*

Endorsed on cover: File No. 22,693. Oklahoma Supreme Court. Term No. 302. Citizens Bank of Pryor Creek, plaintiff in error, vs. C. M. Keys and Hugh Mills, partners under the firm name of C. M. Keys & Company; Stock Yards Bank, and Wat Mayes. Filed May 24th, 1911. File No. 22,693.